



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

TAL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PURSUANT  
TO ARTICLE 13 OF THE RULES OF  
PROCEDURE**

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**Counsel for the Applicant:**

Michael Brazao, OSLA

**Counsel for the Respondent:**

Paulos Weldesellasie, ALS/OHRM

## **Introduction**

1. The Applicant has served the African Union United Nations Mission in Darfur (UNAMID) as its Head of Office, Political Affairs in El Geneina, D-1, on a series of fixed-term appointments since 12 October 2014.

2. On 8 June 2017 he filed an application for suspension of action (SOA), pending management evaluation, challenging the Respondent's decision not to renew his appointment beyond 30 June 2017.

3. The Respondent filed his reply on 12 June 2017.

## **Facts**

4. On 12 October 2014, the Applicant joined UNAMID as Head of Office, Political Affairs in El Geneina, Sudan on a one year fixed-term appointment.

5. In July 2015, the Joint Special Representative of UNAMID informed the Applicant that the Sudanese government would not renew his visa upon its expiry on 21 October 2015.

6. In October 2015, the Applicant submitted his passport to the national authorities of Sudan, seeking an extension of his visa for the purpose of his continued employment with UNAMID.

7. On 22 October 2015, the Applicant received a telephone call from the Director of Mission Support (DMS), as well as the Deputy Chief of Staff of UNAMID, informing him that he should immediately leave his duty station of El Geneina en route to Khartoum for the purpose of imminent evacuation from Sudan, due to the expiration of his visa. The Applicant proceeded to Khartoum the following morning. After a week in Khartoum he received his passport with a two-month

extension of his Sudanese visa. At this time the Applicant was explicitly informed that the extension was granted with the express understanding that no further renewals would be granted.

8. On 23 December 2015, the Applicant left Sudan.

9. From February to August of 2016, the Administration placed the Applicant on a series of Temporary Appointments (TAs) and Temporary Duty Assignments (TDYs) with the United Nations Mission in the Republic of South Sudan (UNMISS).

10. On 6 August 2016, the Applicant's TA with UNMISS expired and he was repatriated to his home country of Jordan, where he has been residing until the filing of the present application. While UNAMID has continued to pay him his salary and entitlements during this period of time, he has been assigned no functions and has not been relocated to any other duty station.

11. On 10 October 2016, the Applicant received an email from Ms. Lisa Bittenheim, Assistant Secretary-General for Field Support informing him that if efforts to secure another position proved unsuccessful, the Administration would not renew his appointment with UNAMID beyond 31 December 2016.

12. On 30 November 2016, the Applicant filed a management evaluation request (MER) challenging that decision. On 9 December 2016, the Management Evaluation Unit (MEU) issued the Applicant a letter informing him that the Field Personnel Division (FPD) had extended his appointment until 28 February 2017 for the express purpose of participating in an ongoing POLNET recruitment exercise which was expected to be completed by 31 January 2017. In view of these developments, the MEU declared the Applicant's MER moot.

13. On 1 February 2017, the Applicant received a further extension of his appointment through 30 April 2017.

14. On 12 April 2017 the Applicant filed another MER challenging the implicit decision of the Administration not to renew his appointment beyond 30 April 2017. The Applicant also filed an application for SOA on the same day.

15. On 13 April 2017, the Applicant received an email from a UNAMID Human Resources Assistant, informing him that he would be granted a final, non-renewable extension of his appointment until 30 June 2017.

16. On 28 April 2017, the Applicant received a letter from the UNAMID Chief of Human Resources reaffirming the Administration's position that his appointment would not be renewed beyond 30 June 2017. Also on 28 April 2017, the Applicant opted in to the first semi-annual POLNET Managed Mobility Exercise of 2017 in an attempt to secure a placement elsewhere within the Organization.

17. On 17 May 2017, the Applicant wrote to Mr. Karen Tchalian, UNAMID Chief of Staff, informing him that the Head of the International Organizations Department of the Sudanese Foreign Affairs Ministry had recently informed the Jordanian Ambassador to Sudan that a request to restore the Applicant's visa privileges would be received favourably. The Applicant further informed Mr. Tchalian that their "communication extended to National Security which expressed no objection to reissuing the visa". Based on these new developments, the Applicant requested UNAMID to resubmit a request to the Sudanese Ministry of Foreign Affairs to restore his visa privileges.

18. On 30 May 2017, having not heard any response from Mr. Tchalian, the Applicant sent a follow up e-mail, seeking an update as to his visa situation. That same day, Mr. Tchalian informed him that UNAMID had already submitted the visa request.

19. On 1 June 2017, Ms. Chhaya Kapilashrami, the Director of the Department of Field Support/FPD, wrote the Applicant an email in which she advised him that the

decision to separate him from service on 30 June 2017 would be maintained. That same day, the Applicant responded to Ms. Kapilashrami, advising her of the recent positive diplomatic developments that had resulted in the Sudanese authorities allowing UNAMID to submit an application for a visa on his behalf. He advised Ms. Kapilashrami that his visa application was actively under consideration and implored her to reconsider the Administration's strict adherence to the 30 June 2017 expiration of his appointment.

20. Also on 1 June 2017, the Applicant received an email from POLNET indicating that because his appointment would not be renewed beyond 30 June 2017, he was ineligible to proceed with the ongoing Managed Mobility Exercise. After receiving this email, the Applicant noted that the status of his participation in the ongoing Mobility Exercise on Inspira had been changed from "pending eligibility" to "not eligible".

21. On 5 June 2017, the Applicant filed an MER challenging the decision to separate him from service effective 30 June 2017 and the decision to purge him from participating in the ongoing POLNET Managed Mobility Exercise.

22. On 6 June 2017, Ms. Kapilashrami replied to the Applicant, in which she informed him as follows:

Thank you for your e-mail. As you know the organization has been working on placement efforts as well as placing you on SLWFP. We have also consulted with UNAMID regarding the possible renewal of your visa. Given the difficulties encountered in renewing your visa for nearly 18 month, the prospect of renewal is too uncertain to justify reconsidering the decision on the renewal of your appointment at this stage. **However, should the visa be granted before 30 June, UNAMID may consider reviewing the decision on the non-renewal of your appointment at that time** (emphasis added).

23. The Applicant avers that on 6 June 2017, he received an update that the Jordanian Ambassador to Sudan had received further assurances from the Head of the

International Organizations Department in the Sudanese Ministry of Foreign Affairs that his visa application was being processed.

24. On 5 June 2017, the Applicant filed an MER challenging the decisions: not to renew his appointment beyond 30 June 2017; to expel him from participating in the ongoing first semi-annual POLNET Managed mobility Exercise of 2017; and the violation of his right to receive work as a United Nations employee as established by the United Nations Appeals Tribunal (UNAT) jurisprudence.

## **Submissions**

### ***Applicant***

25. The Applicant's argument of *prima facie* unlawfulness is built on three prongs: failure to accommodate him following his *persona non grata* status, violation of the undertaking to accommodate him until completion of the POLNET exercise and depriving him of right to work.

26. The Administration violated its legal obligation to appropriately accommodate him because of his *persona non grata* (PNG) status.

a. In accordance with *Hassouna* UNDT/2014/094, his PNG status created a legal obligation on the part of the Administration to appropriately accommodate him under the circumstances. In accordance with the Dispute Tribunal's holding in *Hassouna*, so long as he held a reasonable prospect of renewal of his fixed-term appointment were it not for the fact of his PNG status, UNAMID had a duty to move him to a different duty station on the same terms of his appointment at that time.

b. Based on his strong past performance, had he not been declared PNG, he had a reasonable expectation that his fixed-term appointment with

UNAMID at the El Geneina duty station would continue to be renewed for an extended period of time.

c. He was declared PNG on 23 December 2015. Rather than being redeployed on the same terms and conditions of his original appointment, he was placed on a series of short term TAs and TDYs at UNMISS for several months, until he was eventually sent to his native Jordan on 6 August 2016, where for the past 10 months he has been given no work whatsoever to perform, even remotely, as he languishes away in the prime of his career.

d. The Administration's breach of its obligations to accommodate him under *Hassouna* is exacerbated by the fact that when he participated in the first semi-annual POLNET Mobility Exercise of 2016, the Administration denied all his placement requests and instead inexplicably offered him a position in Nyala, South Darfur, Sudan, despite the fact that he was prohibited from working in that very country by virtue of his unresolved PNG status. This risible error is underscored by the UNAMID Chief of Human Resources' belief that the operators of POLNET and other interested stakeholders such as FPD did not even know that the duty station of Nyala was situated in the country of Sudan. Such an egregious mistake is either the result of gross negligence or a cynical attempt to disingenuously provide the appearance of accommodating the Applicant by offering him a placement that he was legally proscribed from accepting.

f. The Administration has further breached its obligation to accommodate him through the totally passive approach it has taken in its supposed efforts to secure him new employment. The Administration's efforts have consisted of merely allowing him to participate in established Placement and Mobility Exercises, along with all other candidates eligible for such exercises, including external candidates. There is no evidence to suggest that

he was afforded any accommodation vis-à-vis the other candidates in these exercises, as would befit his PNG status.

g. To the contrary, he has been extremely vigilant in attempting to either secure a reversal of his PNG status or a fixed-term appointment within a different duty station but has been persistently ignored and rebuffed by the Administration. Since he was placed on PNG status, he has applied for approximately 30 positions within the Organization at the P-5 and D-1 level, seven through various POLNET recruitment exercises and upon his own initiative.

h. The Administration has further breached its obligation under *Hassouna* by granting only a two-month final extension to secure employment. Even if allowing him to participate in the POLNET Mobility Exercise were sufficient for the Administration to discharge its duty to accommodate under *Hassouna*, the Administration's paltry two-month final appointment extension is manifestly inadequate to allow him to fully and fairly participate in this process, which takes many months.

i. The insufficiency of this appointment extension is underscored by the fact that on 1 June 2017, the Administration conveyed its second contested decision when it informed him that he was disqualified from proceeding in this ongoing recruitment by virtue of the fact his appointment will expire before the process is complete, since the Mobility Exercise is only open to internal candidates. Consequently, a two month extension of his appointment provided no meaningful opportunity to obtain continued employment and thus falls woefully short of the standard of accommodation required by *Hassouna*.

27. The Administration violated its undertaking to extend the Applicant's appointment in order to participate in a POLNET Placement Exercise until its completion.

a. His first MER was declared moot by MEU because FPD granted him an appointment extension until 28 February 2017, for the express purpose of participating in a POLNET Placement Exercise, which was supposed to be completed by 31 January 2017. By way of direct negotiation between Counsel for the Applicant and the Administration, the Applicant's appointment was further extended until 30 April 2017 when it became abundantly clear that this POLNET recruitment process would not be completed on time.

b. At the time of the present filing, the second semi-annual POLNET Placement Exercise of 2016 is still not complete, nearly half a year after it was anticipated to be completed as communicated in the MEU's first letter. That letter makes it clear that, FPD granted the Applicant an extension of his appointment for the express purpose of participating in a POLNET Placement Exercise until its completion. At the time of the filing of the present submission, two of the positions in the compendium for which he has applied pursuant to the 2016 Placement Exercise remain "under consideration" on Inspira.

c. Consequently, the Administration's decision not to renew his appointment beyond 30 June 2017, which will deprive him of the opportunity to participate in the ongoing POLNET Placement Exercise until its completion, expressly violates the Administration's specific prior undertaking that resulted in the "mooting" of his first MER.

28. The Administration has violated the Applicant's legal right to work.

a. It is undisputed that he has been left without any professional functions to perform whatsoever since 6 August 2016, when his final UNMISS temporary assignment expired and he was repatriated to his home country of Jordan.

b. Whilst it is acknowledged that UNAMID has continued to pay him his salary and other benefits and emoluments owed to him under his appointment during this period of time, this prolonged period of effectively “paid unemployment” is in contravention of the consistent jurisprudence of the UNDT and UNAT. It is also a state of affairs that the Applicant neither desired nor sought; to the contrary, for the past year he has been extremely proactive in attempting to exercise his right of substantive employment, having applied for approximately 30 positions within the Organization for which he is qualified. Through his repeated emails to various stakeholders, he has persistently expressed his desire and willingness to deploy to any United Nations mission or office to which, as a rostered P-5 candidate in the field of Administration and a rostered D-1 candidate in the field of Political Affairs, he could add value to the Organization.

c. In *Applicant* UNDT/2011/187, UNDT held that work, in addition to being a duty for staff members, is also a right. This pronouncement was reiterated in *El-Awar*, Order No. 59 (GVA/2017). In *Lauritzen* UNDT/2010/172, the Tribunal specifically held that the right to work related to the post for which the staff member was hired; a proposition that was later affirmed by UNAT in Judgment no. 2013-UNAT-282.

d. The Applicant appreciates that the contested administrative decision at issue in the present request for suspension of action is the Administration’s decision not to renew his appointment beyond 30 June 2017. On this point, he submits that the Administration’s illegal deprivation of work over the past 10 months informs the illegality of his appointment non-renewal, as the decision to separate him from service prior to completing the ongoing POLNET exercise would preclude him from any possibility of rectifying this prevailing illegal situation.

*Urgency*

29. His appointment expires on 30 June 2017. He filed his current MER on 5 June 2017. Once receipt of this MER is acknowledged, the MEU will have 45 days in which to issue its final decision, which exceeds the remainder of his present appointment.

30. MEU has no obligation to issue a decision. In order to preserve his rights, he is compelled to seek a suspension of action in case the MEU does not issue its decision before the expiration of his appointment.

31. There is urgency because the contested decision may be implemented before the consideration of his substantive appeal on the merits and as a result he might be denied the chance of regaining the position he was occupying or should be occupying in the event that he is successful on the substantive case especially if the position were to be filled.

32. Since the issuance of the contested decision, very recent and highly pertinent developments have occurred that have radically altered his situation as it existed in mid-April 2017. Specifically, in late May 2017, for the first time since his expulsion from Sudan in December 2015, the highest levels of the Sudanese government permitted him to submit a request for his visa to be renewed.

33. Pursuant to this remarkable change to a policy that had caused the Applicant to be banished from Sudan for one and a half years, a visa request was in fact submitted to the Sudanese authorities in late May 2017, and according to information obtained by the Applicant immediately prior to the submission of the current application, is presently being considered by the relevant Sudanese authorities.

34. This *force majeure* has fundamentally displaced the *status quo ante* that had prevailed until only days ago, and as such has created a situation of severe urgency whereby he faces the very real prospect of being separated from service shortly before the Sudanese authorities may reinstate his visa and thus allow him to

physically encumber the position he was required to abandon one and a half years ago, a post against which he continues to be nominally placed and for which he continues to be paid.

35. Based on his past personal experience and given his exceptional personal history with the Sudanese authorities, his pending request for a visa is likely to take several weeks to process in view all of the bureaucratic and political considerations involved. These momentous developments are occurring in the heart of the Ramadan holy month, which will not end until 26 June 2017 and during which it is to be expected that the expediency of the official functions of the Sudanese government, a predominantly Muslim state, will be severely compromised.

36. Despite this turn of events, which was made possible by his tireless efforts through high-ranking diplomatic channels, the Administration is churlishly and steadfastly maintaining its decision that he shall receive no extension of his appointment, despite the fact that this intransigence could result in his separation from service mere days before a decision on his visa application is issued by the Sudanese authorities.

#### *Irreparable Harm*

37. If his appointment is allowed to expire, his employment prospects with the United Nations will be significantly and adversely affected.

38. UNDT held in *Corna* Order No. 90 (GVA/2010) that the harm is irreparable if it can be shown that suspension of action is the only way to ensure that an applicant's rights are observed. In *Tadonki* UNDT-2009-016, it was held that a wrong on the face of it should not be allowed to continue simply because the wrongdoer is able and willing to compensate for the damage he may inflict and that monetary compensation should not be allowed to be used as a cloak to shield what may appear to be a blatant and unfair procedure in a decision-making process.

39. A suspension of action is the only remedy available which can prevent the Administration from unlawfully depriving him of continued employment with the United Nations. If his appointment is allowed to expire, the Administration is under no legal obligation to ever reinstate him, even if his application for a Sudanese visa is ultimately approved. According to art. 10.5(a) of the Statute of the Dispute Tribunal, even if he were to ultimately succeed in an application on the merits in this case, the Administration always enjoys the prerogative of paying a staff member monetary compensation in lieu of reinstatement.

40. No amount of monetary compensation can adequately repair the damage caused by such an egregious violation of his fundamental rights. He is a D-1 level Head of Office in the prime of his career, who has worked tirelessly over the past one and a half years to preserve his continuity of service within the Organization, preferably through a reversal of the PNG decision that banished him from the country where he dutifully, happily and competently served his mission. Now that he finally stands on the threshold of this ordeal potentially being resolved, the Administration unconscionably and inexplicably remains resolute in obstructing the possibility of such a satisfactory outcome.

***Respondent***

41. The Applicant has not demonstrated that the contested decision is *prima facie* unlawful. The prerequisite of *prima facie* unlawfulness requires that an applicant establish that there are serious and reasonable doubts about the lawfulness of the contested decision.

42. UNAMID's decision to not renew the Applicant's appointment is lawful. A fixed-term appointment carries no expectancy of renewal, irrespective of length of service. Nor does the Organization have an obligation to renew the fixed-term appointment of a staff member whose work visa is not renewed by a host country. Any obligation that the Organization has in such circumstances has been met.

43. The Organization in the present case has taken appropriate steps to alleviate the Applicant's predicament. Following the non-renewal of the Applicant's Sudanese work visa, the Organization facilitated his temporary assignment to UNMISS for a period of six months, while honoring the remainder of his appointment through 11 October 2016. Further, the Organization extended the Applicant's appointment four times, until 30 June 2017, under the same terms and conditions as his original appointment. The Organization also assisted the Applicant in his search for alternative employment within the Organization.

44. The Applicant incorrectly claims that the Organization undertook to extend his appointment until he participated "in a completed POLNET placement exercise," implying his unilateral expectation of indefinite extensions. A legitimate expectation can only arise from "an express promise" by the Organization. In general, an express promise must be in writing. While the Applicant was granted multiple extensions in order to participate in POLNET placement exercises, the Organization never promised to continue to extend the Applicant's appointment indefinitely. On the contrary, the Applicant was explicitly informed that the extension through 30 June 2017 was final. Therefore, the Applicant's claim of contrary undertaking is not credible.

45. The Applicant's functions as Head of Office, Political Affairs, were substantially managerial and involved coordination and close interaction with various UNAMID components as well as external partners. The Applicant could not perform these functions while away from the duty station.

46. The Respondent does not challenge the submission that this application is urgent.

47. The Applicant has not established irreparable harm. A fixed-term appointment carries no expectancy of renewal. The Applicant's separation presents no more harm to him than the eventual separation of any staff member whose fixed-term appointment is due to expire. In respect to the POLNET vacancy track, the non-

renewal of the Applicant's appointment would not affect his entitlement to the full and fair consideration of any pending job applications or his ability to apply as an external candidate. In addition, any harm the Applicant might suffer can be adequately compensated through a monetary award.

### **Considerations**

48. Applications for suspension of action are governed by art. 2 of the Statute and art. 13 of the Rules of Procedure of the Tribunal. Article 13 provides, in the relevant part:

1. The Dispute Tribunal shall order a suspension of action on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

49. All three elements of the test must be satisfied before the impugned decision can be stayed. Accordingly, an application for the suspension of action must be adjudicated against the stipulated cumulative test, in that an applicant must establish that the impugned decision is *prima facie* unlawful, calls for urgent adjudication and that implementation of the impugned decision would cause him/her irreparable harm.

50. The Tribunal is not required at this stage to resolve any complex issues of disputed fact or law. All that is required is for a *prima facie* case to be made out by an applicant to show that there is a judicable issue before the court.<sup>1</sup>

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<sup>1</sup> See *Hepworth* UNDT/2009/003 at para. 10, *Corcoran* UNDT/2009/071 at para. 45, *Berger* UNDT/2011/134 at para. 10, *Chattopadhyay* UNDT/2011/198 at para. 31; *Wang* UNDT/2012/080 at para. 18.

*Tripartite Test for Suspension of Action*

*Prima facie unlawfulness*

51. The key legal issue arising for consideration under this head of the three pronged test is whether the decision not to renew the Applicant's appointment beyond 30 June 2017 is unlawful.

52. The undisputed evidence before the Tribunal is that the event giving rise to this application and the present state of affairs was the placement of the Applicant on PNG status. It is therefore critical to examine what the Administration's legal obligations towards a staff member placed on PNG status by a host member state are and whether they have been breached in the present case.

53. In *Hassouna*, it was held that,

Non renewal or renewal on adverse terms and conditions is an option open to the Secretary-General depending on the circumstances surrounding the PNG decision by the host country. In some cases, staff members are declared *persona non grata* for overstepping their TORs and the mandate of the mission. Where the host country provides the information requested and the SG decides, pursuant to section 20 of the Convention, that the staff member acted outside his/her official capacity, non-renewal is an option. However in the case of a staff member who has been declared *persona non grata* and the host country is not forthcoming with information as to the basis for his/her expulsion or the reasons, if any, do not justify a PNG decision, other considerations may apply. Under these circumstances, a change in the terms and conditions of the staff member's contract or non-renewal is not an option open to the Secretary-General. The Tribunal takes the view that under such circumstances it is the duty of the Organization to take steps to alleviate the predicament in which the staff member finds himself/herself following his/her expulsion from the host country.

[...]

The Tribunal understands his claim to be the following: that he should not bear the adverse consequences of a decision made by the host country for which he was not to blame and that efforts should have been made to deploy him to a different duty station to minimize the

impact of the PNG decision on his career. In other words, his redeployment should have been on the same terms and conditions as his original contract.

[...]

The Tribunal therefore orders the payment of those benefits and entitlements that would have accrued to the Applicant on the basis of a yearly extension of appointment in Entebbe as of 13 January 2012.

54. The Tribunal concurs with *Hassouna* insofar that it is the duty of the Organization to take steps to alleviate the predicament in which the staff member finds himself/herself following his/her expulsion from the host country through no fault of his or hers. This duty, forming part of a more general “duty of care” discussed by UNAT in *Lauritzen*, in the face of *force majeure* must, however, be interpreted in consideration of balancing legitimate interests of the Organization and the staff member. And thus, the scope of the Organization’s duty to alleviate predicaments concerning performing staff members’ function will be greater with regard to staff holding permanent appointments with the Organization, as was the case in *Lauritzen*, where reciprocal interest in maintaining the employment relation is readily built into the terms of appointment. This duty will be more limited with regard to staff on fixed-term appointments. Specifically, legal obstacles in performing the function—just as other *force majeure* obstacles, such as health issues – do not justify the claim to extend or renew the fixed-term appointment indefinitely, until alternative employment is found. Moreover, the scope of the duty of the Organization is to be determined in relation to what is possible and reasonable under the circumstances. In particular, the possibility to redeploy the staff member on the same terms and conditions directly depends on availability of posts and, obviously, the availability of posts at senior professional level is more limited than posts at lower levels whereas demands for these posts are quite specific.

55. Applying the foregoing to the facts of the present case, the Tribunal is convinced that the Administration fulfilled its legal obligations towards the Applicant. It is noted that no evidence was adduced as to why the Sudanese government was not forthcoming as to the basis for the Applicant’s expulsion. The

Applicant's fixed-term appointment during the relevant period, as evidenced by Annex R1 to the reply, was renewable yearly. The Organization, following the expulsion of the Applicant from the Sudan on 23 December 2015, placed him on a series of TAs and TDYs with UNMISS. On 6 August 2016, the Applicant's TA with UNMISS expired and he was repatriated to his home country of Jordan where he continued to receive the benefits that he would have been entitled to on the basis of a yearly extension of his appointment in Sudan from 12 October 2015. The Tribunal accepts that the Applicant could not perform his functions while away from the duty station.

56. Regarding POLNET exercise, the Tribunal notes that it consists of two components: vacancy exercise and managed mobility. The Applicant's ability to benefit from POLNET vacancy exercise remains unaffected by separation. The contention that he should have his appointment renewed in order to enable him to partake in POLNET mobility exercise is untenable in view of his own admission that it may take many months. Moreover, the Tribunal notes that the managed mobility exercise in 2017 is open to staff who have reached their maximum position occupancy, whereas the Applicant's eligibility for it, as acknowledged by the Applicant, is "pending" and not yet accrued.

57. In view of the foregoing the decision was not *prima facie* unlawful at the time when it was taken.

58. Given, however, the centrality of the Sudanese visa issue for the decision to not renew the Applicant's appointment, the recent development, *i.e.*, the prospect of obtaining the visa, changes the factual context to the extent that renders maintaining the decision *prima facie* unreasonable. There is no apparent harm to the interest of the Organization in extending the Applicant's appointment for a few additional weeks that are needed to reasonably ascertain whether the visa is forthcoming or not. As such, the refusal seems to be dictated more by impatience than by genuine consideration. Moreover, in light of the 6 June 2017 correspondence from Ms. Kapilashrami to the Applicant, the UNAMID Administration declares that it "may"

(rather than “will”) review the decision on the non-renewal of his appointment should the Sudanese government grant the Applicant a visa before 30 June 2017. This indicates that there may be other, undisclosed reasons for insisting on separation of the Applicant, which are not related to the visa. Altogether, it amounts to *prima facie* unlawful exercise of discretion.<sup>2</sup>

59. The fact that the contested decision may be implemented notwithstanding the removal of the predicament formally invoked as the reason for non-extension may cause the Applicant irreparable harm. In the procedural sense it weakens the Applicant’s position before the MEU who, as noted by the Applicant, is not obliged to take a decision and may allow the non-renewal to become final in the administrative course of review by the lapse of time. In the material sense, his claim may become irreversibly frustrated if the position were to be filled. The Tribunal therefore finds it important to maintain the *status quo* until the management evaluation has properly considered all facts relevant for the case at hand having available to it updated information on the issuance or refusal of the visa, a question which by then should be clarified. The urgency results directly from the deadlines established for the expiration of the appointment *vis-a-vis* the procedural ones.

## **Conclusion**

60. The application for suspension of action is accordingly **GRANTED**.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 15<sup>th</sup> day of June 2017

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<sup>2</sup> Cf *Sanwidi* 2010-UNAT-084.

Entered in the Register on this 15<sup>th</sup> day of June 2017

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi